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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

VICKI J. AZNARAN and RICHARD N. AZNARAN, Plaintiffs, vs. CHURCH OF SCIENTOLOGY OF CALIFORNIA, et al., Defendants. AND RELATED COUNTER CLAIM	No. CV-88-1786-JMI(Ex) **PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION TO SUPPRESS AND SEAL THE TESTIMONY OF GERALD ARMSTRONG** Date: 11/18/91 Time: 10:00 a.m. Ctrm: James. M. Ideman

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PRELIMINARY STATEMENT

Before the Court is an example of what is Scientology's idea of a "level playing field." In the Aznaran litigation, as in all other litigation in which Scientology is involved, Scientology continues its efforts to skew in its favor judicial fact-finding

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so as to pervert the Court's role in furthering the ascertainment of truth and to obtain unfair advantage over its adversaries.

The following arguments will address the following general categories in relationship to the effects of the Armstrong settlement agreement which result in the:

- Prejudicing of the public record in Aznaran in favor of the allegation that Joe Yanny influences the instant litigation.
- Prejudicing this, and other anti-Scientology litigation by purchasing the absence of critical testimony and material evidence from former high-ranking officials identifying how Scientology was, and is, controlled, thus creating an evidentiary vacuum on issues regarding the exercise of authority within the organization;
- The absence of substantive difference between the Armstrong "settlement agreement" and the Aznaran "release and waiver" that has so often been the focus of Scientology's litigation in the present case reflects an intent to subvert fundamental fairness.
- The nature of Scientology's unfair and overreaching agreements is to subvert the Constitution by stacking the marketplace of ideas with information the opposition to which Scientology has purchased away to make as though such did not exist.

I. DEFENDANTS' CHARACTERIZATIONS OF GERALD ARMSTRONG ARE INACCURATE AND UNFAIR

A. The Allegations Against Armstrong in The Case At Bar

In the instant case, in order to breathe new life into its tired refrain that Joseph Yanny covertly runs - and thus has

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"tainted" - the prosecution of the Aznaran lawsuit, Scientology has put allegations into the record that characterize Gerald Armstrong as follows:

1. "Armstrong is employed by Joseph Yanny as a paralegal on this very case. [Ex. B, p. 25]. For him to now have switched his aid to Greene's office further taints alls of the papers filed by Greene, and is grounds for disqualification of Greene himself as well.

Exhibit A, Defendants' Opposition to Ex Parte Application to File Plaintiffs' Genuine Statement of Issues [Sic] Re Defendants' Motions (1) To Exclude Expert Testimony; and (2) For Separate Trial on Issues of Releases and Waivers; Request that Oppositions Be Stricken; dated August 27, 1991, at 4:26-5:4. [1]/

2. "[Declarant Laurie J. Bartilson was] informed by private investigators hired by my law firm that Armstrong was present at Ford Greene's offices many times from August 3, 1991 through at least August 21, 1991, often for hours and days at a time. . . ."

Id. at 9:19-23.

3. "The extensive involvement of Yanny's other employee in this case following Yanny's disqualification also recently came to the attention of defendants."

---

[1] With respect to exhibits in support of the instant Opposition that are documents already filed in this case, plaintiff will identify the exhibit in the body of the memorandum and cite the pertinent page:line numbers. For the sake of efficiency, only the face page, cited pages and proof of service will be included in the body of each Exhibit. For reference to the total context of such extractions from the record, the Court and parties are referred to the original document filed with the Court.

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Exhibit B, Supplemental Memorandum in Support of Defendants' Motion to Dismiss Complaint with Prejudice; Declarations of Sam Brown, Thorn Smith, Edward Austin, Lynn R. Farny and Laurie J. Bartilson; dated August 26, 1991, at 3:8-10.

4. "Armstrong has recently been identified as a paralegal hired by Yanny to work with him on this case. Yanny represented in argument to Los Angeles Superior Court that he had 'hired Armstrong as a paralegal to help [him] on the Aznaran case.' (Ex. G, Reporter's Transcript of August 6, 1991, at 25.) Armstrong confirmed this characterization, as did Yanny in a declaration. (Ex. B, Declaration of Joseph A. Yanny, July 31, 1991, para. 4; Ex. H, Declaration of Gerald Armstrong, July 19, 1991, para. 4.) As Armstrong is Yanny's paralegal on this case, his new affiliation as an assistant to Ford Greene is truly outrageous."

Id. at 4:10-23.

5. "That Armstrong is amenable to the kind of covert representation in which Yanny is engaging in this case is highlighted by his recorded remarks made in 1984. At that time, Armstrong was plotting against the Scientology Churches and seeking out staff members in the Church who would be willing to assist him in overthrowing Church leadership. The Church obtained information about Armstrong's plans and, through a police-sanctioned investigation, provided Armstrong with the 'defectors' he sought. On November 30, 1984, Armstrong met with one Michael Rinder, an individual

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whom Armstrong thought to be one of his 'agents' (but who was in reality loyal to the Church). In the conversation, recorded with written permission from law enforcement, Armstrong stated the following in response to questions by Mr. Rinder as to whether they had to have actual evidence of wrongdoing to make allegations in Court against Church leadership:

ARMSTRONG: They can allege it. They can allege it. They don't even have -- they can allege it.

RINDER: So they don't even have to -- like -- they don't have to have the document sitting in front of them and then --

ARMSTRONG: Fucking say the organization destroys the documents.

* * *

Where are the -- we don't have to prove a goddamn thing. We don't have to prove shit; we just have to allege it. (Ex. E, Declaration of Lynn R. Farny, para. 6.) With such a criminal attitude, Armstrong fits perfectly into Yanny's game plan for the Aznaran case.

It is apparent that Yanny's disqualification from this case has simply driven him back underground. He challenged the Court by appearing directly in this case and lost. So he now sends his paralegals to aid Greene in his prosecution of the case, thereby doing indirectly what this Court and the Los Angeles Superior Court have forbidden him to do at all.

Id. at 5:11-6:18.

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6. Second, and even more telling, the utter disregard of the truth that the Aznarans have made the trademark of their litigation effort, bears the unmistakable signature of Gerald Armstrong, whose theory of litigating against Churches of Scientology, as captured on videotape in 1984, is not to worry about what the facts really are, but instead to choose a state of 'facts' that should survive a challenge by the Church and 'just allege it.' [Declaration of Earle C. Cooley, Ex. F.]

> It is clear that Armstrong's influence and philosophy permeates the Aznarans' oppositions . . . Armstrong is a paralegal who was hired by Yanny to work on the Aznaran case . . ."

Exhibit C, Reply in Support of Defendants' Motion for Summary Judgment based on the Statute of Limitations dated August 26, 1991, at 2:27-3:19.

7. As detailed in the Preliminary Statement, supra, the real thrust of the Aznarans' Opposition is not the foregoing, ineffectual legal contentions, but rather the 'just allege it' philosophy of Yanny's paralegal, Gerald Armstrong, Yanny's continuing involvement despite this Court's explicit order, and the willingness of the Aznarans and their counsel to say anything at any time to try to breathe life into their false and moribund claims. Armstrong's 'helping out' while the Opposition was concocted not only reveals the contributing taint of Yanny's involvement with this case, it establishes the

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guiding principle that resulted in an Opposition that avoids cogent analysis of pertinent law and fact and instead seeks to prejudice the Court to the point of overlooking the motion, the relevant matters. and the fact that Aznarans have all but expressly conceded that all their claims are time-barred.

Armstrong's philosophy of litigation is that facts and the truth are irrelevant and that all that is required to prevail is to allege whatever needs to be alleged is spelled out in a videotape of Armstrong made in 1984 as part of a police-authorized private investigation of individuals, including Armstrong, who attempted to seize control of the Church. [Cooley Dec., ¶4] In that tape, in the context of a discussion attempting to prove facts in a civil proceeding where evidence was unavailable, Armstrong (under the mistaken belief that he was speaking with an ally) stated what a civil litigant should do when faced with a lack of evidence:

> They can allege it. They can allege it. They don't even have -- they can allege it.
>
> * * *
>
> Fucking say the organization destroys the documents.
>
> * * *
>
> Where are the -- We don't have to prove a goddamn thing. We don't have to prove shit; we just have to allege it.

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* * *

> Those . . . simply show that the Aznarans, Yanny, Greene and Armstrong will say absolutely anything, no matter how false or heinous, when they are concerned.

Id. at 33:21-35:17.

8. "Now Yanny's paralegal and long-time Church adversary, Gerald Armstrong, is on loan to Ford Greene and is not only working diligently on the case, but is furnishing Greene with declarations. As is set forth in the attached declaration of Laurie J. Bartilson and the accompanying exhibits, Armstrong was hired by Joseph Yanny to act as Yanny's paralegal on this very case." Exhibit D, Defendant' Opposition to Ex Parte Application to File Plaintiffs' Opposition to Defendants' Motion to Dismiss Complaint with Prejudice; Declaration of Laurie J. Bartilson; dated August 30, 1991, at 3:21-27.

Defendants have made very serious charges regarding the status and role of Gerald Armstrong, their long-term adversary, in the case at bar. [2]/ Now that Armstrong's response is in the public record - an unequivocal denial of Scientology's allegations and explanation of his reasons therefor - defendants would seal this response, so as to leave its above specified descriptive characterizations as the final word in the public record on the matters (upon which Scientology would then rely, to give the appearance of resolution in its favor).

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[2] By not addressing Scientology's attacks on counsel Greene, this discussion does not downplay the meaning and significance thereof. Such, however, is beyond the scope of the instant Opposition.

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In the "Declaration of Gerald Armstrong Regarding Alleged 'Taint' Of Joseph Yanny, Esquire," filed herein on September 4, 1991, Armstrong set forth his response denying the charge that he was Joe Yanny's employee, conduit, or tool, Exhibit E, at ¶¶ 6, 9, 11, 12.

In so doing, Armstrong forthrightly advised the Court of the facts of his prior litigation with Scientology, Id. at ¶ 2, and the existence of the December 6, 1986 settlement agreement with Scientology, which he alleges Scientology has repeatedly violated by telling lies about him in judicial proceedings, including the case at bar as identified above, on subject matters covered by the settlement agreement. Id. at ¶ 3.

II. The Armstrong Settlement Agreement Was Collusive And Deceived Judge Breckenridge

The Armstrong litigation commenced when the Church of Scientology of California sued Mr. Armstrong for conversion arising from his possession of various personal papers and other archival documents of L. Ron Hubbard. Armstrong had access to these documents as the archivist for L. Ron Hubbard while he was a member of Scientology. In due course Mr. Armstrong filed a cross-complaint against Scientology arising from his tenure with Scientology including, inter alia, the intentional infliction of emotional distress. The matter was bifurcated, and, in a 1984 bench trial, Los Angeles Superior Court Judge Paul G. Breckenridge found against the plaintiff Church of Scientology of California, and intervenor (L. Ron Hubbard's wife, Mary Sue Hubbard) on their complaint. Exhibit F, Memorandum of Intended Decision, dated June

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20, 1984. [3]/

On December 11, 1986 a settlement agreement was presented to the state trial court under which Gerald Armstrong agreed to the dismissal of his cross-complaint while permitting Scientology to appeal Judge Breckenridge's decision on the complaint, and to have the matter re-tried against him if the Court of Appeal were to remand for trial. Exhibit H, Reporter's Transcript of 12/11/86 proceedings before Judge Breckenridge, at 2:16-3:21.

During the December 11, 1986 hearing regarding the settlement terms, Judge Breckenridge was not informed that, as a part of the settlement agreement, Armstrong was precluded from filing an opposition to the appeal, Exhibit E herein (Exhibit 1 thereto at ¶¶ 4.A, 4.B), nor was Judge Breckenridge informed that if the matter indeed was retried that there was a side agreement executed by Scientology's counsel under which Armstrong would be indemnified if Scientology prevailed. Exhibit H (Reporter's Transcript); Exhibit I, Indemnity Agreement.

During the course of the hearing Scientology counsel (California attorney Lawrence E. Heller and New York attorney Michael E. Hertzberg) and Armstrong's counsel (Massachusetts attorney Michael Flynn) made the following representations to the court:

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[3] Scientology's initial appeal from the Breckenridge decision was taken in Appeal Case No. B005912. That appeal was dismissed on the grounds that it was premature because the documents which were the subject of the litigation were

> "inextricably intertwined with both complaint and cross-complaint. . . .The upshot is that disposition of a number of documents is left for the trial court's consideration at the close of trial on the cross-complaint, and the present judgment is not a final judgment."

Exhibit G, Opinion filed 12/18/86 in No. B005912, at p. 12-13.

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► That Armstrong had agreed to a Stipulated Sealing Order as part of the overall settlement which required sealing of the entire court file. Exhibit H (12/11/86 transcript) at 6:17-28, Exhibit J, Stipulated Sealing Order.

► That the settlement agreement had been filed with the court and would be subject to the jurisdiction of the court. Exhibit K, Order Dismissing Action With Prejudice filed 12/11/86 by Judge Breckenridge at 1:18-21; Exhibit L, Joint Stipulation of Dismissal filed 12/11/86.

In fact the settlement agreement contains no clause regarding sealing of the file, Exhibit E herein (Exhibit 1 thereto). Further, despite counsels' representations to the contrary, the settlement agreement had not been filed at that time with the court. Exhibits M and N, Minute Orders Of 12/12/86 and 12/17/86, respectively.

Not only did counsel make the above misrepresentations to the Court, they also failed to inform the Court of several matters directly relevant to the settlement which suggests highly questionable conduct on the part of all counsel.

First with respect to ¶¶ 4.A and 4.B of the settlement agreement, Armstrong waived his right to litigate appeal No. B005912 prosecuted by Scientology seeking to reverse the Memorandum of Intended Decision filed by Judge Breckenridge, "or any rights he may have to oppose (by responding brief or any other means) any further appeals taken by the Church of Scientology of California. The Church of Scientology of California shall have the right to file any further appeals it deems necessary." Exhibit E, Ex. 1 thereto at ¶¶ 4.A, 4.B. Thus, counsels' failure

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to advise the Court of such settlement agreement provisions demonstrates that Scientology and its attorneys attempted to prosecute a collusive appeal.

Second, Armstrong was precluded from cooperating voluntarily with any parties adverse to Scientology, including United States government agencies, and was permitted to discuss matters concerning which he possessed evidence regarding Scientology only if required to do so by lawful subpoena. The agreement further provided that Armstrong was to avoid service of process of deposition subpoenas or subpoenas for trial under language stating that he "not be amenable for service of process." Exhibit E, Ex. 1 thereto at ¶ 7.H, p. 10.

Third, as referenced in paragraph 3 of the Settlement Agreement, Armstrong's attorney, Michael Flynn, had negotiated the Settlement Agreement for Armstrong as part of a package settlement on behalf on 19 plaintiffs and, at the same time, settled his (Flynn's) claims against Scientology. Exhibit O, Settlement Agreement among Flynn and his clients. [4]/

Fourth, Flynn failed to disclose that a prerequisite of the collective settlement agreement was that he cease any representation of or provision of assistance to any person adverse to Scientology. Exhibit P, Declaration of Bent Corydon dated 3/6/90.

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[4] Included among the plaintiffs involved in the collective settlement agreement of which Armstrong was a part were Nancy Dincalcis, Kima Douglas, Edward Walters, Laurel Sullivan, and Howard Schomer. Exhibit O. These were the same individuals whose testimony, along with that of Gerald Armstrong, Judge Breckenridge found "to be credible, extremely persuasive, . . . in all critical and important matters, their testimony was precise, accurate, and rang true." Exhibit F, at 7:9-19.

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Based upon the language in paragraph 3 of the Settlement Agreement entered into by Armstrong, it is clear that Scientology has entered into similar silencing agreements with other individuals knowledgeable about its operations. Such agreements operate to the severe detriment of other parties adverse to Scientology in proving their cases against it or defending against Scientology claims against them. Since the Aznarans are plaintiffs and cross-defendants in the instant case, they fall into both categories. [5]/

In his work Equity Jurisprudence (4th Ed.1918) § 397 at 738, Professor Pomeroy states:

> Whenever a party, who as an actor, sets the judicial machinery in motion to obtain some remedy, has violated conscience, good faith, or other equitable principle, in his prior conduct, then the doors of the court will be shut against him in limine; the court will refuse to interfere on his behalf, to acknowledge his right, or to award him any remedy." (Emphasis added.)

Thus, where a contract is made either (1) to achieve an illegal purpose, or (2) by means of consideration that is not legal, the contract itself is void. Witkin, Summary of California Law (9th Ed. 1987) Vol. 1, Contracts, § 441 at 396. (Hereinafter "Witkin, § ____ at ____.") Since an illegal contract is void, it cannot be ratified by an subsequent act, and no person can be estopped to deny its validity. Witkin, § 442, at 396; First National Bank v. Thompson (1931) 212 Cal. 388, 405-406; Wood v. Imperial Irrigation Dist. (1932) 216 Cal. 748, 759 ["A contract

---

[5] Indeed, the provisions of the Armstrong settlement agreement closely reflect those set forth in the alleged Releases and Waivers allegedly signed by the Aznarans on April 9, 1987, and which have been the subject of much litigation herein, including an interlocutory appeal that the Ninth Circuit denied.

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void because it stipulates for doing what the law prohibits is incapable of being ratified."]

A party need not plead the illegality as a defense and the failure to do so constitutes no waiver. In fact, the point may be raised at any time, in the trial court or on appeal, by either the parties or on the court's own motion. Witkin, § 444, at 397; LaFortune v. Ebie (1972) 26 Cal.App.3d 72, 75, 102 Cal.Rptr. 588 ["When the court discovers a fact which indicates that the contract is illegal and ought not to be enforced, it will, of its own motion, instigate an inquiry in relation thereto."]; Lewis & Queen v. M.M. Ball Sons (1957) 48 Cal.2d 141, 147-148, 308 P.2d 713 ["[T]he court has both the power and the duty to ascertain the true facts in order that it may not unwittingly lend its assistance to the consummation or encouragement of what public policy forbids [and] may do so on its own motion."].

Thus, the court will look through provisions that may appear valid on their face, and with the aid of parol evidence, determine that the contract is actually illegal or is part of an illegal transaction. Id. 48 Cal.2d at 148 ["[A] court must be free to **search out illegality lying behind the forms in which the parties have cast the transaction to conceal such illegality.**"]; Witkin, § 445 at 398.

There are two reasons for the rule prohibiting judicial enforcement, by any court, of illegal contracts.

> [T]he courts will not enforce an illegal bargain or lend their assistance to a party who seeks compensation for an illegal act [because] . . . Knowing that they will receive no help form the courts . . . the parties are less likely to enter into an illegal agreement in the first place.

Lewis & Queen, supra, 48 Cal.2d at 149 [308 P.2d at 719].

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> This rule is not generally applied to secure justice between parties who have made an illegal contract, but from regard for a higher interest - that of the public, whose welfare demands that certain transactions be discouraged. (Emphasis added.]

Owens v. Haslett (1950) 98 Cal.App.2d 829, 221 P.2d 252, 254.

Illegal contracts are matters which implicate public policy. Public policy has purposefully been a "vague expression . . . [that] has been left loose and free of definition in the same manner as fraud." Safeway Stores v. Hotel Clerks Intn'l Ass. (1953) 41 Cal.2d 567, 575, 261 P.2d 721. Public policy means "anything which tends to undermine that sense of security for individual rights, whether of personal liberty or private property, which any citizen ought to feel is against public policy." Ibid. Therefore, "[a] contract made contrary to public policy may not serve as the foundation of any action, either in law or in equity, [Citation] and the parties will be left where they are found when they come to court for relief. [Citation.]" Tiedje v. Aluminum Paper Milling Co. (1956) 46 Cal.2d 450, 454, 296 P.2d 554.

> It is well settled that agreements against public policy and sound morals will not be enforced by the courts. It is a general rule that all agreements relating to proceedings in court which involve anything inconsistent with [the] full and impartial course of justice therein are void, though not open to the actual charge of corruption.

Eggleston v. Pantages (1918) 103 Wash. 458, 175 P. 34, 36; Maryland C. Co. v. Fidelity & Cas. Co. of N.Y. 71 Cal.App. 492.

The consideration for a promise must be lawful. Civil Code § 1607. Moreover, "[i]f any part of a single consideration for one or more objects, or of several considerations for a single object, is unlawful, the entire contract is void." Civil Code § 1608. Fong

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v. Miller (1951) 105 Cal.App.2d 411, 414, 233 P.2d 606. "In other words, where the illegal consideration goes to the whole of the promise, the entire contract is illegal." Witkin, § 429 at 386; Morey v. Paladini (1922) 187 Cal. 727, 738 ["The desire and intention of the parties [to violate public policy] entered so fundamentally into the inception and consideration of the transaction as to render the terms of the contract nonseverable, and it is wholly void."].

In Brown v. Freese (1938) 28 Cal.App.2d 608, the California Court of Appeal adopted section 557 of the Restatement of the Law of Contracts prohibiting as illegal those agreements which sought to suppress the disclosure of discreditable facts. The court stated:

> A bargain that has for its consideration the nondisclosure of discreditable facts . . . is illegal. . . . In many cases falling within the rule stated in the section the bargain is illegal whether or not the threats go so far as to bring the case within the definition of duress. In some cases, moreover, disclosure may be proper or even a duty, and the offer to pay for nondisclosure may be voluntarily made. Nevertheless the bargain is illegal. Moreover, even **though the offer to pay for nondisclosure is voluntarily made and though there is not duty to make disclosure or propriety in doing so, a bargain to pay for nondisclosure is illegal.** (Emphasis added.]

Brown 28 Cal.App.2d at 618.

In Allen v. Jordanos' Inc. (1975) 52 Cal.App.3d 160, 125 Cal.Rptr. 31, the court did not allow a breach of contract action to be litigated because it involved a contract that was void for illegality. In Allen, plaintiff filed a complaint for breach of contract which he subsequently amended five times. Plaintiff, a union member, was entitled by his collective bargaining agreement to have a fair and impartial arbitration to determine the truth or

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falsity of the allegations against him of theft and dishonesty. The allegations of the amended complaints stated that there had been an agreement between the parties whereby defendant laid off plaintiff, defendant's employee, and allowed plaintiff to receive unemployment benefits and union benefits. "Defendants also agreed that they would not communicate to third persons, including prospective employers, that plaintiff was discharged or resigned for dishonesty, theft, a bad employment attitude and that defendants would not state they would not rehire plaintiff." Id. at 163. Plaintiff alleged there had been a breach in that defendants had communicated to numerous persons, including potential employers and the Department of Human Resources and Development, that plaintiff was dishonest and guilty of theft and for that reason had resigned for fear of being discharged for those reasons, that plaintiff had a bad attitude and that defendants would not rehire him. Plaintiff alleged as a result of the breach he suffered a loss of unemployment benefits, union benefits and earnings. The court held that the plaintiff had bargained for an act that was illegal by definition, the withholding of information from the Department of Human Resources Development. It stated:

> The nondisclosure was not a minor or indirect part of the contract, but a major and substantial consideration of the agreement. A bargain which includes as part of its consideration nondisclosure of discreditable facts is illegal. (See Brown v. Freese, 28 Cal.App.2d 608, 618 [83 P.2d 82.].) It has long been hornbook law that consideration which is void for illegality is no consideration at all. [Citation.]

Id. 52 Cal.App.3d at 166.

The consideration for a promise must be lawful. Civil Code §

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1607. Moreover, "[i]f any part of a single consideration for one or more objects, or of several considerations for a single object, is unlawful, the entire contract is void." Civil Code § 1608. Fong v. Miller (1951) 105 Cal.App.2d 411, 414, 233 P.2d 606. "In other words, where the illegal consideration goes to the whole of the promise, the entire contract is illegal." Witkin, § 429 at 386; Morey v. Paladini (1922) 187 Cal. 727, 738 ["The desire and intention of the parties [to violate public policy] entered so fundamentally into the inception and consideration of the transaction as to render the terms of the contract nonseverable, and it is wholly void."].

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Brown 28 Cal.App.2d at 618.

The object of a contract must be lawful. Civil Code § 1550. If the contract has a single object, and that object is unlawful, the entire contract is void. Civil Code § 1598. Civil Code § 1667 defines unlawfulness as that which is either "[c]ontrary to an

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express provision of the law," or is "[c]ontrary to the policy of the express law, though not expressly prohibited" or is "[o]therwise contrary to good morals."

Civil Code § 1668 states:

> All contracts which have for their object, directly or indirectly, to exempt anyone from responsibility for his own fraud, or willful injury to the person or property of another, or violation of law, whether willful or negligent, are against the policy of the law.

Further, an agreement to suppress evidence or to conceal a witness is illegal. Witkin, § 611 at 550. Penal Code §§ 136, 136.1, and 138. In Mary R. v. B. & R. Corp. (1983) 149 Cal.App.3d 308, 196 Cal.Rptr. 871, a licensed physician was alleged to have repeatedly engaged in the sexual molestation of a 14 year old girl. A civil lawsuit arising from the molestations had been settled and the file sealed. In the order dismissing the action by stipulation and sealing the court files, the trial court, at the request of the parties, ordered the parties, their agents and representatives never to discuss the case with anyone. The appellate court found such "confidentiality" was against public policy. That court stated:

> The stipulated order of confidentiality is contrary to public policy, contrary to the ideal that full and impartial justice shall be secured in every matter and designed to secrete evidence in the case from the very public agency charged with the responsibility of policing the medical profession. We believe it clearly improper, even on stipulation of the parties, for the court to issue an order designed not to preserve the integrity and efficiency of the administration of justice [Citation], but to subvert public policy by shielding the doctor from governmental investigation designed to protect the public from misconduct within the medical profession, and which may disclose a professional license of this state was used to establish a relationship which subjected a juvenile patient to criminal conduct. **Such a stipulation is against public policy, similar to an agreement to conceal judicial proceedings and to obstruct justice.** . . . Accordingly, . . . such a contract made in violation of

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> established public policy will not be enforced . . . . [Emphasis added.]

Id. at 316-317.

Similarly, in Tappan v. Albany Brewing Co. (1889) 80 Cal. 570, 571-572, the court invalidated a settlement agreement provision. It stated:

> It was contended by the Respondent that this was nothing more than a payment of a sum of money by way of a compromise of litigation, and that such contracts have been upheld. We do not so construe the agreement. It was a promise to pay a consideration for the concealment of a fact from the court and the parties material to the rights of said parties, and which it was her duty to make known. Such a contract was against public policy.

In the instant case, the releases are void because they violate the public policy prohibiting the obstruction of justice by suppressing evidence of illegal conduct that is criminal and discreditable. Moreover, the object of, and consideration for, the agreement being to prosecute a collusive appeal, avoiding service of process, and the wholesale removal of witnesses and evidence from the judicial process is also illegal.

Since Scientology not only is trying to enforce an illegal contract, but is also trying to hide such an agreement from the disinfecting influence of public illumination, the motion to seal should be denied.

III. THE ARMSTRONG SETTLEMENT AGREEMENT IS PART OF THE RECORD IN THE COURT OF APPEAL AND SCIENTOLOGY HAS NOT ATTEMPTED TO SEAL IT IN THAT COURT.

The California Court of Appeal addressed Armstrong's litigation with Scientology in Church of Scientology v. Armstrong (1991) 232 Cal.App.3d 1060, 283 Cal.Rptr. 917, rev. denied S022840 (October 17, 1991) (ruling on Los Angeles Superior Court Nos.

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B025920 [appeal from judgment] & B038975 [appeal from order unsealing the file]). In the Armstrong litigation concerning Appeal No. B025920 in the Court of Appeal, on February 20, 1990 Armstrong petitioned for (said petition being filed on February 28, 1991) permission to file a respondent's brief, Exhibit Q, which on March 9, 1990 was granted. Exhibit R. On March 1, 1990 Armstrong filed a similar petition in the Court of Appeal regarding appeal Case No. BO38975. Exhibit S. Included in support of both petitions as Exhibit A was the December 6, 1986 Mutual Release of All Claims and Settlement Agreement. Apparently, the settlement agreement resides, unsealed, in the file of the Court of Appeal. Exhibit T, Bent Corydon's Opposition to Motion to Seal Portion of File; Declaration of Toby L. Plevin dated October 17, 1991 in Corydon v. Church of Scientology International, et al. LASC C 694401, at ¶ 4.

In the Court of Appeal decision in Church of Scientology v. Armstrong, the appellate court specifically devotes an entire section of the opinion to the subject that is described, "The Record on Appeal Is Not Sealed." See, Revised Notice of Motion and Motion to Seal Prior Settlement Agreement; Memorandum of Points and Authorities in Support Thereof; Declaration of Peter M. Jacobs; filed herein 10/8/91, Ex. A thereto at Bates-stamped p. 28.

Scientology misleads this Court in stating "Indeed, in an abundance of caution, the Armstrong defendants and cross-complainants have recently moved the Court of Appeal to seal the appellate record as well, to ensure that the privacy rights for which they bargained are maintained despite Armstrong's efforts to

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breach his Agreement. [Ex. B]." Id. at 4:21-5:2. A close examination of Exhibit B to Scientology's instant motion reveals, however, that it has made no effort to seal those portions of the record in the Court of Appeal which contain the settlement agreement.

Specifically, at Exhibit B in support of its motion at Bates-stamped page 52, Scientology states:

> The record on appeal in this case consists of the trial transcripts, the documents constituting the appendix, and the various briefs filed in connection with the appeal. Many of these documents contain some discussion on the controverted documents which were sealed by the trial court, as discussed in greater detail in the declaration of Kenneth Long, the individual who worked as CSC's representative in connection with the case, and who is familiar with the appellate record. Because of the compelling reasons discussed herein, and particularly the fact that many of the documents in the appellate record, other than the briefs, are the same documents that have been sealed below for nearly five years, portions of the appellate record also should be sealed.

In the Declaration of Kenneth Long, referred to in the above-quoted argument, in support of the motion to seal in the California Court of Appeal, he states:

> Accordingly, on behalf of CSC, I respectfully request the Court to seal the testimony Gerald Armstrong, Vaughn Young and Laurel Sullivan in the Armstrong Reporter's Transcript pages 57-60 and 251-277 in Armstrong Appellant's Appendix, 4-28 of Respondent's Brief in Armstrong, and Exhibits C, K, L, and N in the "Appendix of Appellants" filed in Appeal No. B038975. If these portions of the appellate record are also sealed, it will preserve the property and privacy interests which CSC has fought to protect by its filing of the Armstrong suit, and which the trial court recognized in sealing the documents at the outset of the litigation.

Id. at ¶ 8, Bates-stamped pp. 60-61.

Therefore, for 20 months Scientology has not sought to seal in the California Court of Appeal what it protests should be sealed in this Court. The settlement agreement is part of the

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public record in the California Court of Appeal which Scientology has not deemed sufficiently important to even attempt to seal. [6]

Thus, in addition to the skewing of the record that would result from the suppression and sealing of Armstrong's September 4, 1991 declaration, to seal the settlement agreement would be futile. The agreement exists, and is available for public inspection in the record in the California Court of Appeal. Therefore, to grant Scientology's motion would not only be a futile exercise, it would also violate the Federal Rules of Civil Procedure that "shall be construed to secure the just, speedy, and inexpensive determination of every action." Fed.R.Civ.P. 1.

IV. THE AGREEMENT UNDERMINES AND OBSTRUCTS THE JUST AND EFFICIENT OPERATION OF THE CIVIL JUSTICE SYSTEM

Essentially, what Scientology seeks through its motion is a protective order.

Scientology's motion should be denied for an additional reason which addresses a larger scale and perspective. On a national and international basis, Scientology has taken action to implement a scheme. Scientology's intent has been expressed in an unparalleled effort that has been designed and intended to remove witnesses of its crimes and civil transgressions from the public domain. In so doing, Scientology achieves two objectives, the

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[6] Furthermore, Scientology has made no attempt to seal the letters dated March 3 and 6, 1990 respectively, from Bent Corydon's attorney, Toby Plevin to the Court of Appeal. Exhibit U [without its supporting exhibits which have otherwise been filed herein]. Armstrong's settlement agreement was attached thereto as Exhibit B.

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removal of witnesses and the stacking of the marketplace of ideas in its favor, each of which strikes at the heart of our democratic system.

Secrecy is fundamentally inconsistent with our system of public justice. The federal courts are not private arbitrators provided for the sole benefit of disputants; they are the repository of the judicial power of the United States and the business they do is the public's business. See, Nixon v. Warner Communications, Inc. (1978) 435 U.S. 589, 597 [recognizing the general right of the public to insect and copy judicial records]; cf. Fed.R.Civ.P. 5 (d) (all papers served upon a party after the complaint must be filed with the court unless the court otherwise orders). By analogy, the principle of openness extends to discovery materials and defendants' effort to seal Armstrong's testimony in the case at bar. "[A]s a general proposition, pretrial discovery must take place in public unless compelling reasons exist for denying the public access to the proceedings." American Telephone & Telegraph Co. v. Grady (7th Cir. 594 F.2d 594, 596; see also, Wilk v. American Medical Ass'n (7th Cir. 1980) 635 F.2d 1295, 1299; Phillips Petroleum Co. v. Pickens (N.D. Tex. 1985) 105 F.R.D. 545.

The presumptive right of public access conforms with the U.S. Supreme Court's decision in Seattle Times v. Rhinehart (1984) 467 U.S. 20, that a protective order supported by good cause does not violate a party's constitutional right to disseminate discovery material. The Court's discussion clearly indicates that "parties have general first amendment freedoms with regard to information gained through discovery and that, absent a valid court order to

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the contrary, they are entitled to disseminate the information as they fit." Public Citizen v. Liggett Group, Inc. (1st Cir. 1988) 858 F.2d 775, 780, citing Seattle Times v. Rhinehart (1984) 467 U.S. 20, 31-36.

It is well settled that "[t]o overcome the presumption [of public access], the party seeking the protective order must show cause by demonstrating a particular need for protection. A party seeking a protective order bears the burden of establishing good cause. Broad allegations of harm, unsubstantiated by specific examples of articulated reasoning, do not satisfy the Rule 26 (c) test. Moreover, the harm must be significant, not a mere trifle." Cipollone v. Liggett Group, Inc. (3d Cir. 1986) 785 F.2d 1108, 1121; Joy v. North (2d Cir. 1982) 692 F.2d 880, 894.

The general rule in federal court is that discovery and trial records and materials are not confidential, and are considered open records available to the public. Johnson Foils v. Huyck Corp. (N.D.N.Y. 1973) 61 F.R.D. 405, 410. The party seeking to limit disclosure must move for a protective order and demonstrate that the material is confidential and that the disclosure would create a competitive disadvantage to the party. Parsons v. General Motors Corp. (N.D. Ga. 1980) 85 F.R.D. 724.

The issuing of a protective order is the exception, rather than the rule. The motion for a protective order has traditionally been disfavored, with the burden on the moving party to show plainly adequate reason for the order. See, U.S. v. Purdome (W.D. Mo. 1962) 30 F.R.D. 338, 341; Glick v. McKesson & Robbins, Inc. (W.D. Mo. 1950) 10 F.R.D. 477; Blankenship v. Hearst Corp. (9th Cir. 1975) 519 F.2d 418; U.S. v. IBM (S.D.N.Y.

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1974) 66 F.R.D. 186, 189.

It is defendants' burden to show "good cause"; and, this is not a mere balancing of equities test. The burden is on movant to demonstrate the harm by a "particularized and specific demonstration of fact, as distinguished from stereotyped and conclusory statements." U.S. v. Garrett (5th Cir. 1978) 571 F.2d 1323, 1326, n.3. First, defendants must prove that the matter sought to be protected is a trade secret or other confidential research or development or commercial information. Waelde v. Merck, Sharp & Dohme (E.D. Mich. 1981) 94 F.R.D. 27; Monaco v. Miracle Adhesives Corp. (E.D. Pa. 1979) 27 F.R.Serv.2d 1401. Second, defendants must show that unrestricted disclosure would "work a clearly defined and very serious injury." U.S. v. IBM (S.D.N.Y. 1975) 67 F.R.D. 40, 46; Reliance v. Barron's (S.D.N.Y. 1977) 428 F.Supp. 200, 202-03. It is not sufficient that the information might cause public embarrassment to the corporation. In re Coordinated Pretrial Proceedings in Petroleum Products Antitrust Litigation (C.D. Cal. 1984) 101 F.R.D. 34, 40 ("It is not the duty of federal courts to accommodate the public relations interests of litigants."); Brown & Williamson Tobacco Co. v. FTC (6th Cir. 1983) 710 F.2d 1165, 1180. Third, even if defendant has satisfied the first two tests, it must show that its interest in non-disclosure is not outweighed by countervailing interests. General Dynamics Corp. v. Selb Mfg. Co. (8th Cir. 1973) 481 F.2d 1203, 1212; U.S. v. Hooker Chems. & Plastics Corp. (W.D.N.Y. 1981) 90 F.R.D. 421, 425; Zenith Radio Corp. v. Matsushita Elec. Indus. Co. (E.D. Pa 1981) 529 F.Supp. 866, 889. Thus, the Court should consider whether the order would prevent the threatened

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harm; whether there are less restrictive means of preventing the harm; and whether the interests of the public and of the plaintiff opposing the motion are more significant that the interests of defendants.

As the Supreme Court has pointed out, "There is no absolute privilege for trade secrets and similar confidential information." Federal Open Market Committee v. Merrill (1979) 443 U.S. 359, 363. Rather, the courts "have in each case weighed their claim to privacy against the need for disclosure." Ibid. The decision to grant, or maintain, a protective order is, of course, within the sound discretion of the district court. Scott v. Monsanto Co. (5th Cir. 1983) 868 F.2d 786, 792. A critical component in the proper exercise of discretion is a determination of whether the defendant's interests in maintaining secrecy are outweighed by public access to the information. See, Krause v. Rhodes (6th Cir. 1983) 671 F.2d 211.

Another reason why the Armstrong, Aznaran, and other Scientology secrecy agreements should not be absolutely enforceable is because there is strong public interest in the just and efficient operation of the civil justice system. Fed.R.Civ.P. 1 provides that the Federal Rules of Civil Procedure "shall be construed to secure the just, speedy, and inexpensive determination of every action."

A significant number of cases similar to plaintiffs' are now pending in various courts. The focus of each case is on abusive and illegal treatment by Scientology and, for the purposes of liability and damages, who controls and, over the years who has controlled, Scientology. To require each plaintiff to conduct

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discovery from scratch is a tremendous waste of the energies and resources of both the parties and the courts. The Seventh Circuit has stated:

> This presumption [in favor of public access] should operate with all the more force when litigants seek to use discovery is aid of collateral litigation on similar issues, for in addition to the abstract virtues of sunlight as a disinfectant, access in such cases materially eases the tasks of courts and litigants and speeds up what otherwise may be a lengthy process. . . .

Wilk 635 F.2d at 1299.; Ward v. Ford Motor Co. (D. Colo. 1982) 93 F.R.D. 579, 580 ["Each plaintiff should not have to undertake to discover anew the basic evidence that other plaintiffs have uncovered. To do so would be tantamount to holding that each litigant who wishes to ride a taxi to court must undertake the expense of reinventing the wheel. Efficient administration of justice requires that courts encourage, not hamstring, information exchanges."] Numerous other courts have reached similar conclusions. See, e.g., Patterson v. Ford Motor Co. (W.D. Tex. 1980) 85 F.R.D. 152, 153-54 ["There is nothing inherently culpable about sharing information obtained through discovery. The availability of discovery information may reduce time and money which must be expended in similar proceedings, and may allow for effective, speedy, and efficient representation."]; Hooker Chem., 90 F.R.D. at 426 ["Use of the discovery fruits disclosed in one lawsuit in connection with other litigation, and even in collaboration among plaintiffs' attorneys, comes squarely within the purposes of the Rules of Civil Procedure. Such cooperation among litigants promotes the speedy and inexpensive determination of every action as well as conservation of judicial resources."] Williams v. Johnson & Johnson (S.D.N.Y. 1970) 50 F.R.D. 31, 32-33

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[Attorneys who share fruits of discovery "reduce the time and money which must be expended to prepare for trial and are probably able to provide more effective, speedy, and efficient representation to their clients. . . . such collaboration comes squarely within the aims laid out in the first and fundamental rule of the Federal Rules of Civil procedure."]; Deford v. Schmid Prods. Co. (D. Md. 1989) 120 F.R.D. 648, 654 ["Sharing discovery materials may be particularly appropriate where multiple individuals assert essentially the same wrongs"]; Waelde, 94 F.R.D. at 30 ["there is no merit to the proposition that the fruits of discovery may not be shared."]; Parsons, 85 F.R.D. 742 (that plaintiff will share information with other plaintiffs' attorneys is not good cause for a protective order).

Relieving each plaintiff of the burden of reinventing the wheel is not merely a matter of efficiency. By raising the artificially high cost of discovery, defendants succeed in precluding some victims from pursuing otherwise meritorious claims at all. Costly justice is too often justice denied.

Moreover, precluding information sharing by attorneys for victims in various cases undermines the reliability of the discovery process itself. The Supreme Court has stated that "the deposition-discovery rules are to be accorded a broad and liberal treatment," based upon the fundamental precept that "Mutual knowledge of all the relevant facts gathered by both parties is essential to proper litigation." Hickman v. Taylor (1947) 329 U.S. 495, 507. The purpose of broad discovery rules is to "make trial less of a game of blind man's bluff and more a fair contest with the basic issues and facts disclosed to the fullest

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practicable extent." United States v. Proctor & Gamble Co. (1958) 356 U.S. 677, 683.

Further, information sharing prevents fraud in the discovery process. The possibility of a corporate defendant falsifying responses to discovery requests by an individual claimant who has no access to other sources of information is very real. See, e.g., Rozier v. Ford Motor Co. (5th Cir. 1978) 573 F.2d 1332.

Finally, a protective order that unnecessarily limits the dissemination of materials gathered in discovery may violate the First Amendment, and constitute an improper "prior restraint." See, In re Halkin (D.C. Cir 1979) 598 F.2d 176, 186 & 191; U.S. v. IBM (S.D.N.Y. 1979) 82 F.R.D. 183, 185; In re Upjohn Co. Antibiotic Cleocin Prod. Liab. Litig. (E.D. Mich 1979) 81 F.R.D. 482, 485. See also, generally, Comment, "The First Amendment Right to Disseminate Discovery Materials: In re Halkin", 92 Harv.L.Rev. 1550 (1979); Note, "Rule 26c Protective Orders and the First Amendment", 80 Colum.L.Rev. 1645 (1980).

> [A] court will consider granting relief from an improvident agreement, especially when the agreement disserves public policy such as that which favors full discovery and disposition of litigation on the merits. See In re Westinghouse Elec. Corp, etc. (10th Cir. 1978) 570 F.2d 899, 902. Therefore, when the agreement appears to be particularly inequitable, the Court may always examine the protective order to determine whether it was proper in the first instance and modify and vacate such an order on the grounds of being improper ab initio. Id.

Parkway Gallery Furniture v. Kittinger/Pa. House (M.D.N.C. 1988) 121 F.R.D. 264, 267.

The Armstrong settlement agreement violates each of the policies identified above. Thus, it should be kept in the public eye, not hidden from it.

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CONCLUSION

Based upon the foregoing points and authorities is support thereof, plaintiffs respectfully submit that defendants' motion to seal the September 4, 1991 declaration of Gerald Armstrong and the Exhibits attached thereto, should be denied.

Respectfully submitted;

DATED: November 4, 1991

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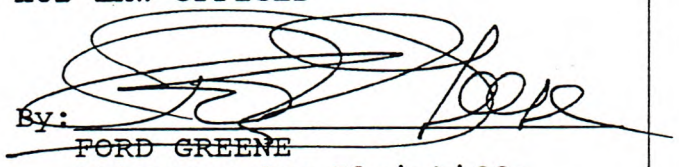

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PROOF OF SERVICE

I am employed in the County of Marin, State of California. I am over the age of eighteen years and am not a party to the above entitled action. My business address is 711 Sir Francis Drake Boulevard, San Anselmo, California. I served the following documents: PLAINTIFFS' OPPOSITION TO MOTION TO SUPPRESS AND SEAL TESTIMONY OF GERALD ARMSTRONG; DECLARATION OF FORD GREENE IN SIPPORT THEREOF; PRPOSED ORDER on the following person(s) on the date set forth below, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid to be placed in the United States Mail at San Anselmo, California: SEE ATTACHED SERVICE LIST

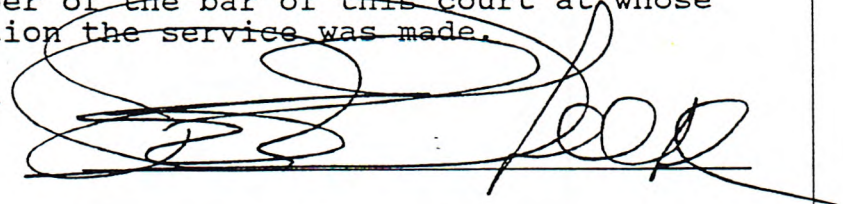
[X] (By Mail) I caused such envelope with postage thereon fully prepaid to be placed in the United States Mail at San Anselmo, California.

[ ] (Personal Service) I caused such envelope to be delivered by hand to the offices of the addressee.

[ ] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

[X] (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

DATED: November 4, 1991



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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

VICKI J. AZNARAN and RICHARD N. AZNARAN, Plaintiffs, vs. CHURCH OF SCIENTOLOGY OF CALIFORNIA, et al., Defendants. AND RELATED COUNTER CLAIM	No. CV-88-1786-JMI(Ex) **[Proposed] ORDER** Date: 11/18/91 Time: 10:00 a.m. Ctrm: Hon. James M. Ideman

Having reviewed and considered the papers in support of and in opposition to defendants' motion to seal the declaration of Gerald Armstrong filed herein on September 4, 1991, said motion is hereby **DENIED.**

///

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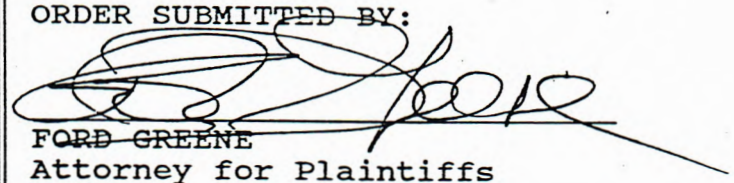
DATED:

_____
United States Judge

ORDER SUBMITTED BY:



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